88-1067

No. _____

Supreme Court, U.S.
FILED
DEC 15 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

In the Matter of
THOMAS J. KAVANAGH
Conservator of

CARL ROHRBACH,
Conservatee.

THOMAS J. KAVANAGH,

Appellant,

—v.—

RICHARD E. COVEN,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

JURISDICTIONAL STATEMENT

THOMAS J. KAVANAGH
521 Fifth Avenue, 17th Floor
New York, New York 10017
(212) MU 7-0890
Appellant *pro se*

62 pp

QUESTIONS PRESENTED

The immediate, though not the primary, issue herein is the constitutionality of an order of New York's Court of Appeals dated September 15, 1988, denying Appellant due process by erroneously dismissing as "untimely" his motion to renew argument on said Court's order of February 17, 1988--in which Justice Vito Titone, accused of fixing Mafia cases "took no part". Said order of February 17, 1988 dismissed Appellant's appeal from an order of the Supreme Court of New York, Appellate Division, First Department dated March 19, 1987 affirming an order of the New York Supreme Court, New

York County, dated October 6, 1986 under New York's Mental Hygiene Law--challenged as unconstitutional--by which order Appellant was removed as the freely selected conservator of his friend and client Carl Rohrbach, whose life savings (kept intact by Appellant without fee or commission) were delivered into the hands of the son of a Genovese crime family "soldier" Albert "Al Sappo" Viggiano known to his colleagues on New York State's august Law Revision Commission, to the Judges whom he helps to select in the Bronx, and to his Mafia clientele as Paul A. Victor who is being investigated for his "mob" connections; and when Victor declined said appointment, then said Conservatee's life savings were given

to Bruno Cappellini, New York County's Public Administrator who, like Victor, was also under investigation for accumulating a "slush fund" and other malfeasance for which he was ultimately driven from public office in disgrace.

For dutifully protecting the Conservatee's life savings by opposing the aforesaid scandalous appointments Appellant was chastised by said New York Supreme Court order of October 6, 1986 which imposed sanctions in the form of a directive to Appellant to pay $15,000.00 to Appellee for his services in obtaining Victor's and Cappellini's appointments.

Whereupon Appellee entered a $15,000.00 judgment on said order of October 6, 1986

and proceeded to collect by levy and otherwise over $3,000.00 from Appellant.

Appellant, on learning in June 1988 that Cappellini's ouster from office in disgrace finally took place that month, and as Appellee never served Appellant with Notice of Entry of said Court of Appeals' order of 2/17/88, Appellant did on 7/29/88 contemporaneously serve Appellee with a Notice of Entryof said order together with a Notice of Motion to said Court of Appeals seeking, on the basis of the "new fact" of Cappellini's actaul removal in disgrace, renewal of argument of said Court's sua sponte motion dismissing Appellant's appeal by said order of 2/17/88.

Said Court of Appeals on 9/15/88

without opinion as to the merits, dismissed as "untimely" Appellant's renewal motion on said Court's motion sua sponte dismissing said appeal on the grounds the order appealed did not finally determine the proceeding.

The questions presented on this appeal are:

1. Can New York's Court of Appeals consistent with due process and equal protection as required by the U.S. Constitution, and in accord with the Judiciary's inherent obligation to providently exercise its discretion arbitrarily dismiss as untimely Appellant's motion to renew argument on said Court's sua sponte motion dismissing his appeal from an Appellate Division

order of 10/6/86 delivering Conservatee's life savings first to a Mafia lawyer under probe for "mob" connections, and next to a Public Administrator also being probed for "slush fund" accumulation, when said renewal motion was made on an uncontrdictable new fact that said substitute conservator Cappellini's probe had culminated in his actual removal from office in disgrace ?

2. Can a State statute, consistent with the jury trial requirements of the U.S. Constitition, deny a jury trial to a litigant against whom a $15,000.00 judgment is sought?

3. Can a State statute, consistent with the due process and equal protection

of law requirements of the U.S. Constitution, grant a trial when removing one Conservator, and deny a trial when removing another Conservator ?

4. Can a N Y State court, consistent with the due process and equal protection of law requirements of the U.S. Constitution, ignore a statutory requirement of New York's Mental Hygiene Law in Section 77.33 stating a Petition to remove a Conservator must be heard by the appointing judge ?

5. Will the welfare of prospective Conservatees throughout the United States be protected if this Court sets a precedent by sustaining the appointments without trial

as Conservators of Carl Rohrbach, first Paul Victor, being probed for "mob" connections, an unrepentent son of a Mafia "soldier" whose chief income as a lawyer is derived from Mafia clientele; and as an alternate choice, Bruno Cappellini, a probed malfeasor, driven from the public office of Public Administrator in disgrace ?

6. Will any lawyer in the United States assume the financial risk of defending the property of any helpless Conservatee if this Court sets a precedent by sustaining the "trialess" imposition by New York's Supreme Court of a $15,000.00 judgment against Conservator-Appellant, for opposing appointments of Victor and Capp-

llini as Conservators of Carl Rohrbach who are manifestly unqualified, which appointments were affirmed at every level in New York·s judicial system on adjectival arguments alone that fail to mask the fact that the removal proceeding appealed is a small but perfectly fiting piece of the mosaic pattern of corruption now known to the civilized world to exist in New York City and its Court system ?

x

PARTIES TO THE PROCEEDING

The caption hereof lists parties to the proceeding. Copies of all papers pertinent to this appeal will be sent to the United States attorney for the Southern District of New York, to the Solicitor General of the State of New York, and to Hendler and Murray, P.C. the attorneys for American Insurance Company, the surety on Conservator's bond, and to Bruno Cappellini who, in combination with the Appellee herein moved for my arrest and imprisonment for appealing his appointment as Rohrbach's Conservator and may wish to renew his motion before this Court.

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SUPREME COURT OF THE UNITED STATES

October Term 1988

In the Matter of
THOMAS J. KAVANAGH
Conservator of

CARL ROHRBACH,
Conservatee

THOMAS J. KAVANAGH,
Appellant

-v-

RICHARD E. COVEN
Appellee

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The Order appealed from of the

Court of Appeals of New York, signed 9/15/88 (1A) dismissing as untimely, Appellant's motion to renew argument of said Court's sua sponte motion dismissing said appeal on 2/17/88 (3A) on the ground the Appellate Division order of 3/19/87 (9A)appealed, did not finally determine the removal proceeding.

The only opinion rendered was by the Supreme Court of N Y, County of N Y, Special Term I, on September 13,1985 (24A). The Order of said Supreme Court, N Y County removing Conservator-appellant was entered October 6,1986 (11A).

JURISDICTION

Appellant-Conservator Kavanagh appeals

from a final order of the Court of Appeals of New York signed 9/15/88 dismissing as untimely, Appellant's motion to renew argument of said Court's sua ponte motion dismissing said appeal on 2/17/88 on the manifestly mistaken round that the order appealed did not finally determine the proceeding, which was brought to a final conclusion by the primary order of the Supreme Court, N Y County, Special Term, Part I, entered October 6, 1986, which granted in toto Referee-Appellee's petition, supported by his report, to remove Conservator-Appellant and directing him to pay personally $15,000.00 to Referee-Appellee who entered, and began collecting by levy and

and otherwise a final judgment for $15,000 representing the Referee-Appellee's fee for obtaining the appointments of Mafia lawyer, Victor which was declined, and finally the appointment of Public Administrator, Bruno Cappellini, probed for "slush funds" and at last driven from public office in disgrace; which primary final order denied Appellant a jury trial before the Judge who had appointed him Conservator, as required by the N Y Mental Hygiene Law.

Since Appellant's application for judicial review by the New York Court of Appeals terminated with said Court's order of 9/15/88 dismissing Appellant's motion to renew argument on said Court's sua ponte

motion dismissing his appeal on 2/17/88 on the ground the Appellate Division's order of 3/19/87 did not finally determine the removal proceeding, a notice of Appeal from said order of the New York Court of Appeals of 9/15/88 was timely served and filed on 10/15/88 with the Court possessed of the record in this case (Supreme Court, New York County) and 10/15/88 a copy of said Notice of Appeal was filed with the Court from whose order this appeal is taken (New York Court of Appeals).

This appeal is being docketed in the Court within 90 days of the Order of the Court of Appeals of New York.

The jurisdiction of this Court is in-

under 28 U.S.C. Sec. 1237 (2).

CONSTITUTIONAL, AND STATUTORY PROVISIONS INVOLVED

This case involves the U.S. Constitution's VII Amendment which preserves the right to trial by jury where the amount in controversy exceeds twenty dollars; and Section 1 of the U.S.Constitution's XIV Amendment which prohibits the states from making any law which deprives any person of their property without due process of law, or which denies any person equal protection of the laws. Also involved is a N Y Statute, Section 77.33 of the Mental Hygiene Law requiring that removal petitions to replace a Conservator must be made to the appointing judge.

STATEMENT OF THE CASE

1. The Parties. Appellant was freely chosen by Rohrbach to be his Conservator, if ever needed, on July 24,1979. Appellant served without fee or commission--and by defeating four different claims against the Conservatee's estate saved it $27,000.00--and filed a final account in December 1986 showing a balance of $45,000.00. The Appellee, an official referee of the said Appellate Division first heard of Rohrbach when an Appellate Division colleague, ex-Law Secretary, John J.Lamendola demanded Appellant's removal as Conservator on the pretext that Appellant's marriage to one Christina Reedman, who had a

unasserted claim for services to Conservatee, constituted a disqualifying conflict of interest. Lamendola swears he first heard of Rohrbach when he was helping his crony, the Principal Law Assistant at said tribunal, Robert P. McGreevy to "grab" a $675,000.00 building from aged Anna Richter, an old acquaintace of Appellant. Lamendola and McGreevy's "grab" was spoiled by Appellant who obtained the appointment of a Guardian ad Litem to protect her interests. Appellant's removal and replacement,on Lamendola's demand, by first the Mafia's lawyer, Victor, and next by Bruno "slush-fund" Cappellini after two respectable lawyers,Harry Grossman and "The"

(renowned) Harry Lipsig,refused to administer the punishment to Conservator for McGreevy and Lamendola in retaliation for spoiling their "grab".

2. The Mental Hygiene Law. The removal proceeding was brought on before Judge Arthur E. Blyn who was not the appointing judge. Appellant moved to refer it to the appointing Judge Martin Evans, to be tried there by a jury. Judge Blyn refused to refer it to Judge Evans, and usurped said appointing Judge's prerogative to hear any petition to remove his appointee. This procedure is mandated by the Mental Hygiene Law, Section 77.33 (30A)

as was demonstrated in the removal proceeding against John Zaccaro the Conservator who converted $175,000.00 of Conservatee Alice Phelan's money to his private use, and was given a trial in open court before the appointing Judge Edwin Kassoff. See "Matter of John Zaccaro, Conservator of Alice Phelan, Conservatee Supreme Court of N Y, Queens County Index 17169. 1982. If Zaccaro who converted $175,000.00 to his own use got a trial in open Court, as required by N Y's Mental Hygiene Law under Section 77.33 thereof, and was not ordered to pay $15,000.00 as Appellant was ordered to do without any trial then Appellant did

not receive equal protection of law. Appellant's rights to due process and equal protection of law were violated by not granting his motion for a jury trial before the Judge who appointed him.

The New York Court of Appeals order dismissing said appeal on the mistaken ground that the Appellate Division order of 3/19/87 appealed failed to determine the Conservator removal proceeding. Said contested removal proceeding was clearly determined in all respects in favor of the Referee-Appellee as the record shows: the Conservator was replaced by a substitute, and Appellee entered and collected over

#3,000.00 of a final $15,000.00 judgment imposed on Appellant for opposing the appointment of unfit substitute Conservators like Mafia lawyer Victor, and "slush fund" Cappellini.

The Court of Appeals orders of 2/17/88 and 9/15/88 dismissing said appeal and denying renewal of argument on said dismissal sustained by meritless, adjectival arguments only said removal order, and in doing so approved and compounded the deprivation inherent in the primary removal order of Appellant's constitutional roghts to due process and equal protection of law.

Which deprivation of constitutional

rights, if allowed to stand, will constitute an omnious precedent denying due process and equal protection of law in future Conservator-removal proceedings.

THE QUESTIONS ARE SUBSTANTIAL AND OF IMPERATIVE PUBLIC IMPORTANCE

Conservatorship proceedings have grown to immense proportions in N Y State and affect the most fundamental rights guaranted by the U.S.Constitution, viz the rights to be secure in the enjoyment of personal liberty and the possession of property.

If the Order appealed from is not reversed and this proceeding is not remanded to the N Y Supreme Court for a jury trial,

before Justice Martin Evans the appointing Judge as required by N Y'S Mental Hygiene Law, Section 77.33 to determine if the Conservator-appellant's opposition to the appointments of a Mafia lawyer and a "slush fund" accumulating official as custodian of Conservatee's life savings was reasonable--in which case it would be unjust to order him to pay $15,000.00 to Appellee,who helped bring the Mafia into the Conservatee's life --or, on the other hand, to allow the jury to vote their approval of such appointments and confirm the $15,000.00 penalty levied against Conservator-appellant as his just punishment for resisting such appointments, then this case will stand as a precedent at

the highest level, which can be cited by any venturesome predator, including those with "mob" connections who see easy profits by intrusion into the lives of helpless Conservatees to show that the jury trial, due process and equal protection of law have no application in Conservatorship removal proceedings. And that the following cases no longer are reliable authority:

> Due process of law has not been defined but is "fundamental fairness" Bagley v Bagley 292 NY Supp 2nd 796 In re Coates 368 U S 34; Missouri v Gehmer 281 U S 313; Saunders v Shaw 244 U S 317.

"Violation of equal protection of law can be brought about by an unequal and discriminatory administration of a statute which is fair and legal on its face" Poindexter v Greenhow 114 U S 27; Yick Wo v Hopkins 118 U S 356; U S v Reynolds 235 U S 133.

"Equal protection means all persons subjcet to a particular legislative act shall be treared alike as to privilege conferred and in liabilities imposed." Tyler v Eastern Discount Corp 286 N Y Supp 2d 948; Fenster v Leary 20 N Y 2nd 309; Peo v Citmiak 299 N Y Supp 2nd 593; Peo v Tromtore 261 N Y Supp 2nd 474.

CONCLUSION

For the foregoing reasons the Order below hould be reversed and the removal proceeding should be remanded to N Y State's Supreme Court, N Y County for a jury trial of all issues before Justice Martin Evans, the appointing Judge.

Respectfully submitted

THOMAS J. KAVANAGH
Conservator-appellant,pro se
521 5th Avenue 17th Fl
New York, N Y 10017
212-MU 7-0890

APPENDICES

Appendix A
Court of Appeals Order
of 9/15/88

STATE OF NEW YORK
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the 15th day of September, A.D.1984

PRESENT, Hon. Sol Wachtler, Chief Judge presiding

- - - - - - - - - - - - - - - - - -

Mo. No. 953

In the Matter of Thomas J. Kavanagh, Conservator of Carl Rohrbach, Conservatee.
Richard E. Coven, Referee,
Respondent,

-v-

Thomas J. Kavanagh, Conservator,
Appellant

- - - - - - - - - - - - - - - - - -

A motion having heretofore been made herein upon the part of the appellant for reconsideration of this Court's 2/17/88 dismissal of appeal, papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is dismissed as untimely.

DONALD M. SHERAW
Donald M. Sheraw
Clerk of the Court

Appendix B
Court of Appeals
order of 2/17/88

COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the 17th day of February A.D.1988

PRESENT, Hon. Sol Wachtler, Chief Judge presiding

- - - - - - - - - - - - - - - - - - - -

Mo. No. 203 SSD 5

In the Matter of Thomas J. Kavanagh, Conservator of Carl Rohrbach, Conservatee,

Richard E. Coven, Referee
Respondent,

-v-

Thomas J. Kavanagh, Conservator,
Appellant.

- - - - - - - - - - - - - - - - - - - -

The appellant having filed notice of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeal be and the same hereby is dismissed without costs, by the Court sua sponte, upon the ground that the order

appealed from does not finally determine the proceeding within the meaning of the Constitution.

Judge Titone took no part.

DONALD M. SHERAW

Donald M.Sheraw
Clerk of the Court

Appendix C

Notice of Appeal to the
Court of Appeals of N Y
10/14/88

COURT OF APPEALS
STATE OF N Y

- - - - - - - - - - - - - - - - -X

In the Matter of
THOMAS J. KAVANAGH
Conservator of

CARL ROHRBACH
Conservatee

N Y Co. Clk's
Index 90123-80

NOTICE OF APPEAL

Court of Appeals
Mot. No 953

- - - - - - - - - - - - - - - - -X

RICHARD E. COVEN, Referee

Petitioner-
Respondent

-v-

THOMAS J. KAVANAGH, Conservator

Respondent-
Appellant

- - - - - - - - - - - - - - - - -X

PLEASE TAKE NOTICE, that Appellant, Kavanagh hereby Appeals to the Supreme Court of the United States from a final order of the Court of Appeals of the State of N Y fated 9/15/88 and filed on said date dismissing as untimely Appellant's motion for renewal of argument of this Court's order of 2/17/88--

Judge Vito Titone, accused of fixing Mafia cases, not participating--which order dismissed Appellant's appeal from an order of the Appellate Division, First Department dated 3/19/87 affirming an order of Justice Blyn of the Supreme Court of N Y, First Department dated 1/8/86 and filed 1/14/86 removing Conservator Kavanagh and replacing him by the son of a Genovese crime family "soldier" Albert "Al Sappo" Viggiano known to his colleagues on the august Law Revision Commission of N Y State as Paul A. Victor undergoing a Federal Grand Jury probe for "mob" connections with a group in the Bronx who "walk around carrying bags of loot"; and modified (when Victor declined, by appointing Bruno Cappellini by Judge Blyn's order 9/29/86 (when Cappellini was being probed for maintaining a $100,000.00 "slush fund"--he was finally driven from public office in June 1988) which order directed Appellant to pay

to Respondent-Referee $15,000.00 for removal services that delivered Conservatee's life savings successively into the hands of two politically appointed public officials manifestly unfit to be anyone's Conservator; the ground on which this Court dismissed Appellant's appeal (after it was returned from the U.S. Supreme Court "for want of jurisdiction")was that the order removing the Conservator and ordering payment by him personally of $15,000.00 to respondent did not finally determine the proceeding; this appeal is taken from this Court's order of 9/15/88 which dismissed as "untimely" Appellant-Kavanagh's motion for renewal ofargument on this Court's order of 2/17/88 on the ground Appellant's conformity with the provisions and requirements of the Civil Practice Law and Rules governing service of Notice of Entry of Orders, and Notice of motions to renew argument, did on 7/29/88 serve contemporaneously

Respondent-referee with a notice of entry of the order of 2/17/88 and notice of motion to renew argument on said order on the "new fact" of Conservator Bruno Cappellini's removal from office in disgrace in June 1988 which new fact was not available for submission to this Court when it dismissed the instant appeal by its order of 2/17/88 and which "new fact" is material and decisive in vindicating Conservator-Appellant's opposition the order delivering Conservatee-Rohrbach's life savings into the hands of a Conservator such as Bruno Cappellini, appointed while under investigation and finally publically driven from office in disgrace.

Dated: NY NY
October 14,1988

Yours, etc
Thomas J. Kavanagh
Conservator-
Appellant, pro se
521 5th Ave 17th Fl
NY NY 10017

TO: Richard M. Coven
Referee-respondent
535 5th Avenue
NY NY 10017

Appendix D

Order of the Supreme Court
Appellate Division, First
Department, March 19,1987

At a term of the Appellate
Division of the Supreme
Court held in and for the
First Judicial Department
in the County of New York,
on March 19,1987

Present- Hon Joseph P.Sullivan, Justice Presiding
Sidney H.Asch
E.Leo Milonas
Bentley Kassal Justices

In the Matter of Thomas J.Kavanagh,Conservator of Carl Rohrbach,Conservatee.

Richard E. Coven, Referee,
Petitioner-Respondent

29515N
M-599

-v-

Thomas J. Kavanagh, Conservator
Respondent-Appellant

An appeal having been taken to this Court by the respondent-appellant from a resettled order of the Supreme Court, New York County (Arthur Blyn,J.) entered on Oct-

ober 6,1986,

And said appeal having been argued by Thomas J. Kavanagh, appellant pro se; and due deliberation having been had thereon,

It is unanimously ordered that the resettled order so appealed from be and the the same hereby is affirmed. Petitioner-respondenthall recover of appellant $50 costs and disbursements of the appeal. Motion by petitioner respondent for an order dismissing the appeal, and for other relief denied.

ENTER,
JOHN REYNOLDS
Clerk

BEST AVAILABLE COPY

Appendix E

Order of the Supreme Court
N Y County, Spec I, October
6, 1986

At a Special Term, Part I of the Supreme Court, held in and for the County of N Y, at the Courthouse, 60 Centre Street, N Y, N Y on the 29th day of September, 1986

Present:
Hon. Arthur J. Blyn
Justice

- - - - - - - - - - - - - - - - - - - -X

In the Matter of
THOMAS J. KAVANAGH
Conser ator of

CARL ROHRBACH,
Conservatee

Index
90123-80

Resettled
Order

- - - - - - - - - - - - - - - - - - - -X

Upon the annexed affidavit of Bruno Cappellini P A of the County of N Y, sworn to September 10, 1986 and Notice of Settlement of such order as resettled having been given to Thomas J. Kavanagh, Esq. Conservator, pro se; Richard E. Coven, Esq., Referee Petitioner; American Insurance Co.; Citibank, N.A.; and Manhattan Savings Bank;

NOW, on Motion of Joseph T. Arenson, Esq. attorney for the P.A. of the County of N Y, it is hereby

ORDERED, that the Order of this Court dated January 6,1986, and entered January 14, 1986, be and the same hereby is resettled to read as follows:

At a Special Term, Part I of the Supreme Court, held in and for the County of N Y, at the Courthouse, 60 Centre Street, N Y, N Y on the 6th day of January ,1986

Present:
Hon. Arthur J. Blyn
Justice

- - - - - - - - - - - - - - - - - - -X

In the Matter of
THOMAS J. KAVANAGH
Conser ator of

CARL ROHRBACH,
Conservatee

Index
90123-80
ORDER REMOVING CONSERVATOR

- - - - - - - - - - - - - - - - - - -X

Upon reading and filing the order to show

cause of Justice Jawn A. Sandifer, dated March 7, 1983, the petition of Richard E.Coven, Referee duly appointed pursuant to Sections 77.29, 78.25, and 79.17 of the Mental Hygiene Law to examine accounts filed by conservators, committees and guardians of incompetent persons, verified the 3rd day of March, 1983, the affidavit of Mirchell S. Coven, sworn to the 7th day of March 1983, showing due service of said order and petition upon the persons, in the manner and at the time directed by said order, the answer of Thomas J.Kavanagh, the Conservator herein, dated and verified March 18,1983, the cross-petition of said Thomas J. Kavanagh dated and verified March 18,1983, the memorandum decision and order of this Court dated April 20,1983 which inter alia reserved de-

cision on the application to remove the Conservator pending further notice by said Referee of the results of his examination of Conservator's accounts and denied said cross-petition, as modified by the order of this Court dated April 2 ,1983 the Conservator's notice of motion dated September 23,1983 for leave to serve a supplemental answer herein, the affirmation of Thomas J. Kavanagh, dated September 23, 1983 in suppo of said motion, the affidavit of Richard E. Coven sworn to September 10,1983, in opposition to said motion, the reply affirmation of Thomas J. Kavanagh,dated October 4,1983, the order of this Court dated November 23,1983 denying said motion of the Conservator,the Conservator's undated notice of motion returnable December 14,1984 for an order, inter alia, directing the issues be tried by a jury, the affirmation of Thomas

J.Kavanagh,dated December 4,1984 in support of said motion, the affidavit of Richard E. Coven, sworn on December 7,1984, in opposition to said motion, the reply affirmation of Thomas J. Kavanagh dated December 13,1984 the decision and order of this Court dated May 10, 1983 denying said motion of the Conservator, the notice of motion dated June 7, 1985 renewing the motion to remove the Conservator, the affidavit of Richard E.Coven sworn to June 7, 1985 and the Report of Richard E. Coven as such Referee dated June 7, 1985 in support of such motion, the affirmation of Thomas J.Kavanagh dated June 17, 1985 in opposition to such motion, the Conservator's notice of motion dated June 17, 1985 for leave to reargue and/or renew his previously denied motion seeking among other relief a jury trial, the affirmation of Thomas J. Kavanagh dated June 17, 1985 in

support of such motion, the affidavit of Richard E. Coven sworn to June 20,1985, replying upon the motion to remove the Conservator and in opposition to the Conservator's motion to reargue or renew, the reply affirmation of Thomas J. Kavanagh dated June 26,1985 and the affidavit of services of Richard E.Coven, sworn to the 26th day of September, 1985, and after hearing Richard E. Coven, Esq in support of the motion to remove the Conservator, and Thomas J. Kavanagh, Esq., in opposition thereto, and due deliberation having been had thereon and this Court having rendered its written decision and order dated September 13, 1985 and it appearing to the satisfaction of the Court that grounds exist for the removal of Thomas J. avanagh, as Conservator of the property of Carl Rohrbach, the Conservatee herein,

NOW, on motion of Richard E. Coven,Esq. it is hereby

ORDERED, that the motion to remove Conservator and for other relief be and the same hereby is granted; and it is further

ORDERED, that Thomas J. Kavanagh be and he hereby is removed as Conservator of the property of Carl Rohrbach, the above named Conservatee; and it is further

ORDERED, thag pursuant to the rules of the Appellate Division, First Department, the Public Administrator of the County of New York be and hereby is appointed substitute Conservator of the property of the said Carl Rohrbach, with the usual powers incidental thereto as provided by law, conditioned that he will in all things, faithfully discharge the trust imposed upon him and obey all the directions of the Court in regard to the trust, and will make and render a just and true account of all the monies or other property received by him and

the application thereof, and of his acts in the administration of his trust, whenever so required to do so by the Court, and upon filing with the Clerk of the Court a consent duly executed and acknowledged and the designation required by Section 77.17 of the Mental Hygiene Law; and it is further

ORDERED, that a commission may be issued to the said substitute Conservator under the seal of this Court upon filing the consent and the designation required by statute in the office of the Clerk of this County; and it is further

ORDERED, that all of the income and assets of the Conservatee shall continue under said substitute conservatorship and it is further

ORDERED, that the compensation of the substitute Conservator shall be the same as provided in Section 78.21 of the Mental Hy-

giene Law; and it is further

ORDERED that upon the said Public Administrator of the County of New York, duly qualifying as aforesaid as substitute Conservator of the property of Carl Rohrbach, theabove named Conservatee, the said removed Conservator, Thomas J. Kavanagh, pay and turn over to said substitute Conservator all monies and other property remaining in his hands or under his control belonging to the said Conservatee; and it is further

ORDERED, that all persons be and hereby are directed and commanded to deliver to the said substitute Conservator, upon demand and presentation of a certified copy of said commission all property and income of said Conservatee, of every kind and nature which may be in their possession or under their control; and it is further

ORDERED, that the substitute Conservator, upon qualifying as such, be and hereby is directed to investigate the so-called "Reedman transactions" referred to in the decision of this Court dated September 13, 1985 and the Report of Referee Richard E. Coven dated June 7,1985 and, if deemed appropriate,commence legal action to recover the monies paid by the Conservatee; and it is further

ORDERED, that said removed Conservator, Thomas J. Kavanagh, be and hereby is directed to make and file the final account as to all monies and other property of the said Carl Rohrbach, Conservatee, received by him as Conservator of the property of said Carl Rohrbach, in the office of the Clerk of this Court and move to have said account judicially settled, within 30 days of service upon him of a copy of this order with notice of

entry hereof; and it is further

ORDERED, that the said Thomas J.Kavanagh be and hereby is charged with and directed to pay personally the compensation of Richard E. Coven, the petitioner in this proceeding, for the prosecution of this proceeding; and it is further

ORDERED, that the sum of Fifteen Hunddred Dollars ($15,000.00) be and hereby is fixed and awarded to said Richard E.Coven as his reasonable compensation for the prosecution of this proceeding and the said Thomas J. Kavanagh be and hereby is directed to personally pay such sum to said Richard E.Coven out of his own funds and not out of the funds held by him and belonging to the Conservatee; and it is further

ORDERED, that Citibank, N.A. be and hereby is enjoined and restrained from pay-

ing out and or disbursing any of the funds of the said Conservatee, Carl Rohrbach, in account No 030-3311295, or in any account into which said funds have been transferred or in any other account,upon the orders or instructions of Thomas J.Kavanagh; and it is further

ORDERED, that Manhattan Savings Bank be and it hereby is enjoined and restrained from paying out or disbursing any of the funds of the said Conservatee Carl Rohrbach in accounts Nos 2-9045438, 28172163 or 1120-71647, or in any account intowhich said funds have been transferred, or in any other account, upon the orders or instructions of Thomas J. Kavanagh; and it is further

ORDERED, that personal service of certified vopies of this Order upon Citibank, N. A. at 450 W 33rd Street, 6th Floor, N Y 10041, and upon Manhattan Savings Bank at

385 Madison Avenue, N Y 10017 be deemed good and sufficient service hereof; and it is further

ORDERED , that the Conservator's motion for reargument and or renewal of this Court' prior decision of May 10,1985 denying his motion for a jury trial and other relief be and the same hereby isdenied in all respects.

ENTER

A.E.B.

J.S.C.

Filed
Octoober 6,1985
County Clerk's Office
New York

Appendix F

Opinion of the Supreme Court, State of N Y, Special Term I, Sept 13,1985

SUPREME COURT, NY COUNTY
SPECIAL TERM PART I - - - - - -X

In the Matter of

THOMAS J.KAVANAGH
Conservator of

CARL ROHRBACH
Conservatee

Index No
90123-80
#184 6/25/85
#199 6/27/85

- - - - - - - - - - - - - - - - -X

BLYN, J.:

Motions under calendar number 184 of 6/25/85 and 199 of 6/27/85 are consolidated for disposition.

Under motion 184 Referee Richard E. Coven moves for an order removing Thomas J. Kavanagh as conservator of the property of Carl Rohrbach. The Referee originally moved to remove the conservator in March 1983; by decision dated 4/20/83, the removal application was held in abeyance pending examination of the conservator's accounts

The Referee has now completed his examination of said accounts, and his report thereon is submitted in support of the instant renewal of the motion to remove Kavanagh as conservator.

The court finds much cause for concern in the Referee's report. Initially, the court notes that none of the conservator's accounts has been timely filed under the Mental Hygiene Law since his appointment in 1981. This consistent tardiness does a disservice to the estate and the court, and makes a proper examination of the accounts more difficult.

It appears that the estate may have a viable claim against one Christina Reedman concerning the sum of $11,000.00 which was given to her in 1980 by the conservatee just prior to the commencement of the proceedings

leading to the appointment of a conservator. Ms Reedman contends that most of the money was spent--as the conservatee intended -- to hir an attorney to oppose the petition for appointment of a conservator; she concedes that the sum of $4,000 remains out the original $11,000.00. The Referee recommends that the Reedman transactions should be investigated, and if deemed appropriate, legal action commenced to recover the monies paid over by the conservatee.

Ms Reedman, however, is the wife of the conservator (she married Kavanagh in May 1981). Obviously, a conflict of interest exists which would prevent the conservator from properly representing the estate in any proceeding taken against Ms Reedman, his wife.

In light of the foregoing, the court believes that the interests of the conservatee will best be served if Kavanagh is removed

as conservator and a substitute conservator appointed by the Appellate Division, First Department. The Referee's motion (no 184) is therefore granted.

The conservator's motion (no 199) for reargument and renewal of this court's prior decision denying him the right to a jury trial, is denied. No basis whatever has been established for reargument or renewal of the court's decision.

The conservator is directed to file his final account within 30 days of service of a copy of the order to be settled hereon with notice of entry. Settle order, providing for the appointment of a successor conservator to be designated pursuant to the rules of the Appellate Division, First Department.

This decision shall constitute the order of the court.

Dated: Sept 13,1985

A.E.B
J.S.C

Appendix G

Mental Hygiene Law Section 77.33

REMOVAL OF A CONSERVATOR.

The Court appointing a conservator may remove him when he fails to comply with an order, is guilty of misconduct, or for any other cause which to the Court shall appear just.

Appendix H

VII Amendment of the U.S. Constitution

In suits at common law, where the value in controversy shall exceed twenty dollars the right of trial by jury shall be preserved and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of common law.

Appendix I

XIV Amendment of the U.S.Constitution

Section 1. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the U.S.; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurissdiction the equal protection of of the laws